



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 01 2006

OFFICE OF  
ENVIRONMENTAL INFORMATION

The Honorable Henry A. Waxman  
Ranking Minority Member  
Committee on Government Reform  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Waxman:

Administrator Stephen L. Johnson asked me to respond to your letter dated December 21, 2005, regarding the Toxics Release Inventory (TRI) Burden Reduction Proposed Rule published on October 4, 2005, and the Agency's notice to Congress stating its intent to consider modifying the frequency of reporting to TRI. The information you requested is enclosed.

As indicated in EPA's initial response to your letter, Administrator Johnson and I share your belief that the TRI database is an important source of information. We will carefully consider your input as we proceed with the Burden Reduction Proposed Rule and the issue of reporting frequency in the Toxics Release Inventory.

If you have further questions, please contact me or have your staff contact James Blizzard in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-1695.

Sincerely,

A handwritten signature in black ink that reads "Linda A. Travers". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Linda A. Travers  
Acting Assistant Administrator  
and Chief Information Officer

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

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ENVIRONMENTAL INFORMATION

The Honorable Stephen F. Lynch  
Ranking Minority Member  
Subcommittee on Regulatory Affairs  
Committee on Government Reform  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Lynch:

Administrator Stephen L. Johnson asked me to respond to your letter dated December 21, 2005, regarding the Toxics Release Inventory (TRI) Burden Reduction Proposed Rule published on October 4, 2005, and the Agency's notice to Congress stating its intent to consider modifying the frequency of reporting to TRI. The information you requested is enclosed.

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Sincerely,

A handwritten signature in black ink, reading "Linda A. Travers", is positioned above the typed name and title.

Linda A. Travers  
Acting Assistant Administrator  
and Chief Information Officer

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 01 2006

OFFICE OF  
ENVIRONMENTAL INFORMATION

The Honorable Dennis J. Kucinich  
Ranking Minority Member  
Subcommittee on National Security, Emerging Threats  
And International Relations  
Committee on Government Reform  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Kucinich:

Administrator Stephen L. Johnson asked me to respond to your letter dated December 21, 2005, regarding the Toxics Release Inventory (TRI) Burden Reduction Proposed Rule published on October 4, 2005, and the Agency's notice to Congress stating its intent to consider modifying the frequency of reporting to TRI. The information you requested is enclosed.

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Sincerely,

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Linda A. Travers  
Acting Assistant Administrator  
and Chief Information Officer

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**Attachment 1**  
**Responses to Questions Posed in December 21, 2005 Letter**

1. *EPA's stated purpose of the proposed rule to allow greater use of the short TRI "Form A" is to reduce the reporting burden for facilities. EPA's analysis of the estimated burden reductions that facilities would experience included projected burden reductions for completing the required TRI forms as well as burden reductions for record-keeping and mailing. In order to determine whether it is eligible to use Form A for a given chemical, a facility would still have to calculate the amount of the chemical it is managing and releasing to determine eligibility for Form A. Additionally, EPA's proposal states that facilities would still be subject to the same record-keeping requirements.*
  - a. *How will the burden on facilities be noticeably reduced if they still must perform detailed calculations to determine eligibility and if they still must keep the same records? Do EPA's burden-reduction estimates take this into account?*

**Answer:**

Since 1995, when Form A first became available, EPA has estimated that Form A completion and calculation time is approximately 64 percent of Form R completion and calculation time. The Agency used this estimate when completing its burden estimate for the proposed rule. More detailed information on these estimates can be found in Chapter 3 of the economic analysis of the proposed rule, which is available in the public docket (<http://www.regulations.gov>, select "Advance Search" tab – then choose "Docket Search" at the top of the homepage, and enter docket number EPA-HQ-TRI-2005-0073 and click on "Submit" at the bottom right to locate this docket).

Facilities that would be newly eligible to use Form A under the proposed rule would benefit in several ways. First, there are many data fields in Form R that do not appear in Form A, and that are unrelated to estimating the annual volumes of production-related waste. Examples of these fields include, but are not limited to a requirement that respondents estimate the maximum amount of the toxic chemical on site at any one time (Section 4 of Part 2 of Form R), and one that requires respondents to estimate waste treatment methods and efficiencies for their chemicals, as well as onsite recycling and energy recovery processes and methods (Section 7 of Part 2 of Form R).

Second, facilities often report on more than one chemical, and they must submit one Form R per chemical. Facilities would be able to consolidate information about multiple chemicals (and facility information) onto a single Form A, rather than submitting multiple Form Rs.

Third, many facilities with volumes of production-related waste much lower than the 5,000-pound limit proposed for eligibility to use Form A for non-PBT chemicals or the 500-pound limit for PBT chemicals should be able to certify eligibility based on knowledge of use of the chemical during the current year and the prior year's volume of production-related waste, rather than performing calculations or otherwise developing a

precise estimate of current production-related waste volumes. For example, a facility that submitted a Form R for a non-PBT chemical in a previous year, and for which the previous year's production-related waste was 600 pounds may not need to calculate the precise volume in the present year to be able to certify that the production-related waste is less than 5,000 pounds so long as the production volume has remained constant and the facility has not changed its production process.

*If the TRI reporting frequency were to be changed to be biannual rather than annual, would facilities have to keep records for the alternate (non-reporting) years?*

**Answer:**

The Agency has not made any decisions regarding an alternate year reporting approach. We will make such determinations as part of any future rulemaking.

- b. *EPA has reported that it has reduced the time facilities must spend filling out TRI forms through the use of the Toxics Release Inventory-Made Easy (TRI-ME) software. Did the baseline used by EPA to measure the estimated changes in burden that would occur under the proposed rule take into account the burden reductions that have taken place since the incorporation of the TRI-ME software?*

**Answer:**

Neither the baseline nor post-rule burden estimates reflect any burden reductions associated with the use of TRI-ME. The Agency has received much praise from stakeholders for the TRI-ME software, and many users have indicated that it simplifies reporting. However, other users, particularly those with more complex production and waste management processes, have noted that the main burden in TRI reporting is assembling and analyzing the required information, and this process is not significantly affected by TRI-ME. The Agency is continuing to review its burden estimates in light of recent changes to the TRI program, including TRI-ME.

2. *Given the fact that state and local governments rely on TRI data for numerous reasons, including emergency preparedness and pollution prevention, what efforts did EPA make to involve state and local governments in the development of these proposals?*

**Answer:**

EPA conducted an on-line stakeholder dialogue between November 2003 and February 2004, in an effort to explore burden reduction opportunities. EPA welcomed all stakeholders to participate in this dialogue. A *Federal Register* notice announcing the dialogue was published on November 5, 2003 (68 FR 62579). EPA also highlighted this on-line dialogue through its web site ([www.epa.gov/tri](http://www.epa.gov/tri)). On November 5, 2003, EPA sent an e-mail to state TRI Coordinators, notifying them of the on-line dialogue and encouraging their participation. The stakeholder dialogue was supplemented with an EPA white paper titled, "Stakeholder Dialogue Phase II – Burden Reduction Options," which presented six possible approaches for reducing the TRI reporting burden. One of the suggested approaches was to expand the eligibility for TRI Form A.

Subsequent to the stakeholder dialogue, EPA briefed stakeholders on EPA's burden reduction initiatives on October 19, 2004, at EPA Headquarters. The briefing was a public meeting open to anyone who wished to attend. EPA sent notification of the stakeholder briefing to a number of individuals and groups that had previously expressed an interest in TRI issues, including sixty-one representatives of state and territorial governments.

TRI burden reduction issues were also discussed at the TRI National Conferences held on March 31 - April 2, 2004, and February 8-10, 2005. State government representatives routinely participate in this annual conference.

*Do state and local governments support the concept of decreasing the amount of information that facilities must report by allowing greater use of Form A for PBTs and non-PBTs? Do state and local governments support changing the TRI reporting requirements to be biannual rather than annual?*

**Answer:**

The comment period for the proposed rule to expand the eligibility for TRI Form A closed on January 13, 2006. Our preliminary review of comments has identified comments submitted on behalf of five state governments (New Hampshire, Washington, Maine, New York, and Delaware) and twelve State Attorneys General. EPA is currently in the process of reviewing all the comments submitted. The comments can be found in the public docket (<http://www.regulations.gov>, docket number EPA-HQ-TRI-2005-0073).

The stakeholder process on potential modification of reporting frequency is in the planning stage. Thus, we have not received formal comments in that process.

*Please provide a list of all meetings with state and local governments as well as a summary of the comments received by EPA on these TRI proposals.*

**Answer:**

EPA sponsored three meetings attended by state government representatives to provide updates on burden reduction initiatives. These were the 2004 TRI National Conference (March 31 - April 2, 2004), the 2005 TRI National Conference (February 8 - 10, 2005), and the TRI Burden Reduction Stakeholder Briefing (October 19, 2004). Representatives of tribal governments also attended the TRI National Conferences. Since these meetings were primarily briefings updating attendees on burden reduction initiatives, no specific comments were received in support or opposition to expanded eligibility for the TRI Form A Certification Statement.

EPA also notes that the primary sources of hazardous/toxic materials information for emergency responders are the reporting requirements under EPCRA Sections 311 and 312, which would not be affected by the TRI streamlining proposal. These requirements include quantities and locations of hazardous and toxic materials stored on site. The TRI

program is in Section 313 and focuses on annual releases and waste management of toxic chemicals, with a six-month lag between the end of the reporting year and the report due date.

3. *In the proposed rule to allow increased use of TRI Form A for both PBTs and non-PBTs, EPA provided only a conclusory statement that it is not aware that either of the proposals presented in the rule will disproportionately impact minority or low-income communities. As you know, industrial facilities that use toxic chemicals are often located in poor and minority communities. It is difficult to understand how EPA's proposed rule would not disproportionately impact these communities. What analysis has EPA performed to reach this conclusion?*

*EPA evaluated the potential impact of the proposed rule on local communities by analyzing the impact of the proposals by zip code. Of the zip codes that EPA found would lose data under the proposed rule, what percentage is low-income and/or minority communities?*

**Answer:**

To respond to your question, and consistent with EPA guidance on assessing potential environmental justice impacts, we evaluated affected areas by both zip codes and proximity to facilities reporting to TRI.

EPA identified zip codes where one or more facilities reported using a Form R for 2003 and used U.S. Census Bureau (2000 data) zip code tabulation areas to determine two population demographics: % minority population, and % below poverty level. EPA then analyzed zip codes in which one or more facilities reporting to TRI would be eligible to substitute a Form A for a Form R if the proposed regulatory changes were in effect and calculated the same population demographics using the same data sources and demographics. For reference, we show the same demographics for the United States as a whole. The results are presented in Table 1 below.

(Data sources: 2003 TRI Public Data Release; U.S. Census Bureau 2000 Census zip code tabulation areas).

TABLE I Minority and Poverty Demographics By Zip Code			
	U.S. Population as a whole	Within all zip codes in which facilities filed a Form R report for 2003	Within all zip codes in which facilities filed a Form R report for RY 2003, but could have used Form A under the proposed rule
% Minority	31.8%	32.5%	33.5%
% Below U.S. Census Bureau Poverty Level	12.9%	13.4%	13.7%

Similar analysis was conducted based on a one-mile proximity to a facility that reports to EPA's TRI Program. As in the zip code analysis, the results show little variance between the percent of communities with facilities filing Form Rs and the percent of communities where facilities would be able to file a Form A under the proposed rule.

TABLE II Minority and Poverty Demographics By Proximity			
	U.S. Population as a whole	Within 1-mile proximity of all facilities that filed a Form R report for RY 2003	Within 1-mile proximity of facilities that filed a Form R report for RY 2003, but could have used Form A under the proposed rule
% Minority	31.8%	41.8%	43.5%
% Below U.S. Census Bureau Poverty Level	12.9%	16.5%	17.0%

*Has EPA performed any analysis on the potential impact on poor and minority communities of changing the TRI reporting frequency?*

**Answer:**

The Agency has not performed such an analysis, as any need for such an analysis would arise in a future action.

4. *On November 4, 2005, you [Administrator Stephen L. Johnson] issued an internal agency memorandum titled "Reaffirming the U.S. Environmental Protection Agency's Commitment to Environmental Justice". In this memo, you asked the heads of the agency's offices to "consider environmental justice in every aspect of our work to the greatest extent practical and permitted by law." You indicated that this includes "[e]nsuring greater public participation in the Agency's development and implementation of environmental regulations and policies."*

*What special measures will EPA take to ensure that the concerns of poor and minority communities who may be impacted by the proposed changes to TRI are taken into consideration? Did EPA take any such measures prior to developing these proposals and if not, why not?*

**Answer:**

EPA considered the potential impact of the proposed rule on minority populations and low-income populations under Executive Order 12898, "Federal Actions to Address



Environmental Justice in Minority Populations and Low-Income Populations,” as described in the proposed rule (70 FR 57846 –57847, October 4, 2005).

In addition, prior to developing the rule, EPA conducted extensive outreach with stakeholders, which included public interest groups and environmental organizations. Experience suggests that these groups often represent the interests of low income and minority groups.

5. *Included in the docket for the proposed TRI rule are notes from a “TRI Burden Reduction Stakeholder Briefing” that EPA held on October 19, 2004. How many state and local government representatives were invited to this briefing? Included in the list of “stakeholder attendees” are the names of several House and Senate committee majority staff. Did EPA invite any Congressional minority staff to this briefing? If not, why not? Were any representatives of low income/minority communities invited? How were the “stakeholders” selected?*

**Answer:**

In planning for the TRI Burden Reduction Stakeholder Briefing (October 19, 2004), EPA worked with two groups of individuals and organizations that have been most active in TRI matters for a number of years. One group consisted of state and territorial TRI contacts, and the other group included representatives from industry, small businesses, environmental organizations, and public interest groups. These groups are a subset of a much larger stakeholder list that the TRI Program uses to announce the annual release of the TRI Public Data Release, and they represent a broad cross-section of individuals and organizations who have expressed an interest in TRI.

Approximately sixty one state and territorial TRI contacts were invited to attend the TRI Burden Reduction Stakeholder Briefing via e-mail. (EPA relies on state representatives to work closely with local governments within their respective states.) In addition, EPA’s Office of Congressional and Intergovernmental Relations invited four congressional staff to attend the briefing, including majority staff from the House Small Business Committee, majority staff from the House Committee on Resources, and both minority and majority staff from the Senate Environment and Public Works Committee. These selections were based on previous expressions of interest by these staffers in TRI matters. Three of the four congressional staff members invited to the Stakeholder Briefing sent representatives, all of whom were from the majority side. EPA did not invite specific representatives of minority or low-income communities.

6. *How many meetings did EPA hold with industry representatives in the development of these proposals? Please provide copies of all communications sent to, or received from, industry sources related to EPA’s TRI proposals that are not included in the docket for the proposed TRI rule.*

**Answer:**

Former Assistant Administrator Kim Nelson met periodically (approximately quarterly) with various interest groups (including small businesses, other businesses, environmental groups, and other public interest groups) for informal discussions including TRI burden

reduction. In addition to the twelve meetings held by former Assistant Administrator Nelson, there were approximately eight other meetings between EPA staff or management and industry representatives where burden reduction may have been discussed.

All documents relevant to the proposed rule to expand the eligibility of Form A are in the public docket of the rule (<http://www.regulations.gov>, docket number EPA-HQ-TRI-2005-0073).